Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20036

In the Matter of	)	
	)	
Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool	)	PR Docket No. 89-553
	)	
Implementation of Section 309(j) of the Communications Act - Competitive Bidding	)	PP Docket No. 93-253
	)	
Implementation of Sections 3(n) and 322 of the Communications Act	)	GN Docket No. 93-252

To: The Commission

PETITION FOR RECONSIDERATION

CELSMER

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October 23, 1995

Summary

The anticollusion rules adopted in the *2d Recon Order and 7th R&O* are excessively broad and contrary to Commission precedent, and will only succeed in preventing the development of useful agreements that could enhance the efficiency of the auction without affecting the competitiveness of the auction. Applicability of the Commission's anticollusion rules should be limited to only those applicants whose applications are mutually exclusive with one another and not on geographic license areas. Commission precedent supports such a limited application.

The current activity rules have no rational basis. If implemented without changes, these rules will deny incumbent bidders reasonable flexibility to change their bidding strategy during the auction and move their bids to other licenses that could effectively substitute for their incumbent frequencies, as well as skew the auction significantly by irrationally raising the price of encumbered spectrum and lowering the price for unencumbered spectrum. The activity rules should be modified to allow for automatic waiver of the rules which would permit bidders to change frequency blocks on which they are bidding within an MTA to a less expensive (even if less encumbered license) frequency block.

Use of the 40 dBu contour as the protected service area is unrealistically too small, overly restrictive and without any rational basis. The fact that the Commission has applied the 40 dBu contour in the past is irrelevant, since that standard is not based upon real-world operating characteristics. The Commission must provide for protection to the incumbent licensees' 32 dBu contours, as opposed to the 40 dBu contours which substantially

underestimates the real-world signal propagation of the 900 MHz SMR service. Commission precedent supports redefining the protected service area contour of a 900 MHz system. Moreover, the Commission cannot hobble the 900 MHz SMR industry with an overly restrictive definition of the protected reliable service area contour when the 900 MHz SMR industry is now required to compete with other mobile services with dispatch authority. Such action by the Commission is contradictory to the Congressional mandate to treat similarly positioned services alike.

Finally, the Commission's decision to maintain loading requirements for 900 MHz incumbents is arbitrary and capricious and the Commission has failed to justify this disparate treatment of the 900 MHz and 800 MHz SMR frequency segments of this single radio service. The purported immaturity of the 900 MHz service vis-a-vis the 800 MHz service is not sufficient grounds to support continuation of loading requirements for 900 MHz incumbents. Additionally, the degree of channel loading is more appropriately a business decision of the 900 MHz incumbent. Indeed, the incumbent should be free to choose, based on market demand, whether to have a larger number of mobile units per channel, each using the frequencies at shorter intervals, or a smaller number of mobile units per channel, each using the frequencies at longer intervals. The Commission's denial of this choice to 900 MHz incumbents is arbitrary and capricious, and contrary to the Congressional mandate to treat similarly situated radio services alike.

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To: The Commission

PETITION FOR RECONSIDERATION

CELSMeR, by its attorneys and pursuant to Section 1.429 of the Commissions' Rules, hereby petitions for partial reconsideration of the action taken by the Commission in the *Second Order on Reconsideration and Seventh Report and Order*, FCC 95-395, released September 14, 1995 ("*2d Recon Order and 7th R&O*").

I. STANDING

CELSMeR is a general partnership in the business of managing and operating specialized mobile radio ("SMR") stations in the State of Florida and has developed a wide-area 900 MHz SMR system serving central Florida in major trading area ("MTA") M13 (Tampa-St.Petersburg-Orlando). Through the employment of new channel integration technology, CELSMeR has been able to develop a virtually seamless network providing contiguous service across central Florida from the Gulf Coast to the Atlantic Coast. CELSMeR is now focusing its attention on the integration of new digital technology into its

wide-area system. CELSMeR is attempting to develop its wide-area system on an MTA basis and intends to participate in the auction for 900 MHz licenses. Thus, CELSMeR has standing to petition for partial reconsideration of the *2d Recon Order and 7th R&O*.

II. PROCEDURAL MATTER

CELSMeR seeks reconsideration of four of the Commissions' decisions in the *2d Recon Order and 7th R&O*. Two of these decisions have not been subject to reconsideration while the other two decisions were the subjects of previous petitions for reconsideration pertaining to 900 MHz service rules[1]. CELSMeR is not being repetitious by raising these latter two issues again. Rather, the *2d Recon Order and 7th R&O* is a single Commission action which both adopts rules governing the auction of 900 MHz licenses as well as resolves the earlier petitions for reconsideration. CELSMeR cannot seek both reconsideration of one portion of the *2d Recon Order and 7th R&O* and judicial review of another portion of the same action. If CELSMeR seeks judicial review now, it is foreclosed from seeking reconsideration later, but as to the two items referenced above, it must first seek reconsideration. Therefore, CELSMeR is submitting this Petition for Reconsideration now and will file a petition for review later, if necessary. CELSMeR is including in this Petition the two Commission decisions previously subject to reconsideration so as to afford the Commission one more opportunity to cure its mistake and to clarify that CELSMeR retains its right to seek judicial review of those decisions. Under the circumstances, this Petition is not "repetitious" for the purposes of Section 1.106 of the Commission's Rules.

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[1] These petitions sought reconsideration of several aspects of the *Second Report and Order and Second Further Notice of Proposed Rule Making*, FCC 95-159 (PR Docket 89-553), released April 17, 1995 ("*2d R&O and Further Notice*").

III. THE RULES PROHIBITING COLLUSION ARE OVERLY RESTRICTIVE

The anticollusion rules adopted in the *2d Recon Order and 7th R&O* are excessively broad and contrary to Commission precedent, and will only succeed in preventing the development of useful agreements that could enhance the efficiency of the auction without affecting the competitiveness of the auction. By restricting *all* applicants for licenses in the *same* geographic license area from entering into discussions, consortia or arrangements after the filing of the Forms 175, the Commission is effectively prohibiting discussions and agreements between or among applicants whose applications will *not* be mutually exclusive and who will *not* be bidding against each other at auction. Indeed, there are twenty separate licenses being auctioned off in each MTA. Not every applicant for an MTA will be applying for and bidding on all twenty licenses available in the MTA.[2] As a result, many of the applicants for an MTA will not have applications which are mutually exclusive with each other and will not be bidding against each other for the same licenses within the MTA. Thus, there is little risk of anticompetitive conduct by such applicants.

Geographic license area is irrelevant to the issue of preventing collusion in the 900 MHz auction. Therefore, applicability of the Commission's anticollusion rules should be limited to only those applicants whose applications are mutually exclusive with one another. Commission precedent supports such a limited application. For both the narrowband and the broadband PCS auctions, the Commission modified its anticollusion rules to permit

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[2] For example, an incumbent most likely will apply for and bid on a license or licenses for the frequency block(s) on which the incumbent currently operates, as well as some alternative frequencies in the event the incumbent is not the successful bidder for its incumbent frequency block(s).

bidders who had not applied for *the same licenses* to enter into bidding agreements during the course of the auction. The Commission based application of the anticollusion rules in the PCS auctions on the mutual exclusivity of applications rather than on geographic license areas.[3] In doing so, the Commission stated that

> [O]ur prohibition on communications among bidders and formation of agreements among bidders after applications have been filed may have been excessively broad in that it includes communications and agreements with bidders who *are not bidding against each other*, and so may prevent useful agreements that have no effect on the competitiveness of bidding.

Competitive Bidding 2d MO&O, 9 FCC Rcd at 7254 ¶51 (emphasis added). The Commission upheld this conclusion in the rule making proceeding for the broadband PCS auction:

> We stated in our *Third Memorandum Opinion and Order* on narrowband PCS auctions that where bidders have not applied for any of the same licenses there is little risk of anti-competitive conduct with respect to a single license. [Citation omitted.]... We reach the same conclusion with respect to broadband PCS.

Competitive Bidding 4th MO&O, 9 FCC Rcd at 6868 ¶55.

The same conclusion applies to the 900 MHz auction -- where bidders are not applying for the same channel blocks in an MTA there is little risk of anti-competitive conduct should these bidders enter into discussions or bidding agreements during the course of the auction. Therefore, application of the anticollusion rules in the 900 MHz auction should be based on mutual exclusivity of applications and not on geographic license areas.

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[3] *See* Implementation of Section 309(j) of the Communications Act - Competitive Bidding (Second Memorandum Opinion and Order), (PP Docket No. 93-254) 9 FCC Rcd 7245, 7254 ¶51 (1994) ("*Competitive Bidding 2d MO&O*"); Implementation of Section 309(j) of the Communications Act - Competitive Bidding (Fourth Memorandum Opinion and Order), (PP Docket No. 93-253) 9 FCC Rcd 6858, 6868 ¶55 (1994) ("*Competitive Bidding 4th MO&O*").

IV. THE CURRENT ACTIVITY RULES ARE IRRATIONAL AND WILL SKEW THE AUCTION

The current activity rules have no rational basis. If implemented without changes, these rules will deny incumbent bidders reasonable flexibility to change their bidding strategy during the auction and move their bids to other licenses that could effectively substitute for their incumbent frequencies, as well as skew the auction significantly by irrationally raising the price of encumbered spectrum and lowering the price for unencumbered spectrum. The activity rules should be modified along the lines suggested by RAM Mobile Data USA Limited Partnership ("RAM") in its September 21, 1995 Emergency Petition for Reconsideration and/or Waiver of Activity Rules, as supplemented by an *ex parte* filing dated September 29, 1995[4]. Unless the Commission grants relief along the lines suggested by RAM, the Commission will be punishing incumbent operators and rewarding non-incumbent greenmailers and boilerrooms.[5]

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[4] RAM presented three alternative proposals to the current activity rules: (i) assign each channel block within a given MTA with the same number of activity units; (ii) during stage 2 or 3 of the auction, increase the number of activity units for a more encumbered license if the price of that license exceeds the price of a less encumbered or unencumbered license; or (iii) allow eligibility rule waivers to allow bidders to change frequency blocks on which they are bidding within an MTA to a less expensive (even if less encumbered license) frequency block. CELSMeR filed comments in favor of RAM's Emergency Petition on October 3, 1995.

[5] In its Public Notice announcing the 900 MHz auction released September 15, 1995, and again at pages 84 and 85 of the Preliminary 900 MHz SMR Auction Bidder Information Package, the Commission noted the possibility of deceptive sales solicitations with respect to the 900 MHz SMR auction. Given the Commission's stated antipathy to the "unscrupulous entrepreneurs [that] may attempt to use the 900 MHz SMR auction to deceive and defraud unsuspecting investors," and given that the current activity rules could benefit such "unscrupulous entrepreneurs" at the expense of incumbent operators, the current activity rules are particularly inappropriate.

The current activity rules obligate national filers such as RAM and Geotek, that may be primarily interested in bidding upon frequency blocks where they are the incumbent but that require the flexibility to bid on unencumbered blocks (if their incumbent blocks are actually bid higher than the unencumbered blocks), to "park" their excess activity units in every round of the auction so long as they remain high bidder on their incumbent spectrum, keeping that excess activity in reserve and available on the chance that their encumbered blocks may be bid higher than unencumbered blocks in future rounds. There is only one place that such a national bidder will "park" the excess activity units. That place is on another license that the national bidder does not want to win and that therefore the bidder hopes will be the subject of a higher bid in a subsequent round. In the meantime, despite its efforts to "park" excess activity units, the national bidder that is doing the parking will inevitably lose some number of its activity units, meaning that when, in subsequent rounds, the bidding starts to increase on the more valuable unencumbered spectrum, that bidder will be unable to submit a higher bid due to an artificially-reduced activity level from earlier rounds. As a result, in the end the auction will result in a higher price for encumbered spectrum, whether it is acquired by the incumbent or by a greenmailer intent on eliciting funds from the incumbent in return for consent to make even routine modifications. Also, it will result in a lower price for the more valuable unencumbered spectrum because some of the eligible bidders will have lost their activity eligibility in earlier rounds and be unable to submit higher bids in the later stages of the auction, when strategies have been revealed.

Overall, the public will lose out because the increase in the price of encumbered spectrum will probably not be sufficient to offset the decrease in the price of unencumbered

spectrum. Of course, the fact that the public will have lost out will be of little comfort to incumbents, such as CELSMeR, who have been subjected to a skewed auction on their incumbent spectrum. Therefore, it is absolutely essential that the Commission act to adjust its activity rules to do away with any incentive for the "parking" of activity units.

Except as otherwise specifically set forth below, CELSMeR supports RAM's proposals, specifically the third alternative proposal. In particular, CELSMeR emphasizes that the Commission must make this into an "automatic waiver" of the activity rules, so that a bidder such as RAM or Geotek will know in advance that it is entitled to the waiver and that there is no discretion on the part of the FCC staff to withhold the waiver if the requirements therefor have been met. The one point where CELSMeR differs from RAM is that CELSMeR believes there is no basis for having a "*di minimis* standard," as an automatic waiver is justified any time that a more encumbered (and therefore less valuable absent greenmail) block is valued more highly than a less encumbered block. Eliminating this *di minimis* standard not only simplifies the automatic waiver process, it probably simplifies the task of writing software to accommodate it. Even RAM concurs that a *di minimis* standard is not necessarily required. *See* the September 29, 1995 Supplement to RAM's Emergency Petition at p.2.

V. USE OF THE 40 dBu CONTOUR AS THE PROTECTED SERVICE AREA IS UNREALISTIC AND TOO RESTRICTIVE

While the 22 dBu contour may be too large to use as the definition of the protected service area of a 900 MHz system, the 40 dBu contour is unrealistically too small, overly restrictive and without any rational basis. The fact that the Commission has applied the 40 dBu contour in the past is irrelevant, since that standard is not based upon real-world

operating characteristics. The only purpose served by such a restriction in protected coverage area is to increase the revenues from the 900 MHz MTA auction by enabling the Commission to steal existing service areas and re-sell them.

A. Commission Precedent Supports Redefining the Protected Service Service Area Contour of a 900 MHz System

CELSMeR's experience in actually operating 900 MHz SMR systems in the "real world" confirms the inadequacy of the 40 dBu contour as the protected service area. Specifically, all of the 900 MHz systems CELSMeR manages provide reliable signal reception over 90% of the time out to the 32 dBu contour. *See* attached Declaration of Don Garrison. The Commission's reliance on the 40 dBu contour as the serviceable coverage area is unsupported by any such field tests.

This situation of a radio service providing subscribers with reliable coverage in excess of the protected service areas originally set forth in the rules is not novel. Such was the case with the cellular radio service. Before cellular service was a reality, the Commission adopted initial rules which limited a station's cellular protected service area to a 39 dBu contour. However, after cellular service to the public became a reality and real-world propagation could be established, the Commission conceded that its prior 39 dBu standard for 800 MHz cellular service was not supported by "real world" facts:

> After careful consideration of the arguments advanced by the commenting parties, we have been persuaded that we should not make the CGSAs coterminous with the composite outer boundary of the predicted 39 dBu contours as proposed. It is clear that many of the commenting parties, including some with years of field experience with cellular system coverage, believe that reliable cellular service is regularly provided beyond the point where the median field strength drops below 39 dBu.

Cellular Service Further Notice of Proposed Rulemaking, 6 FCC Rcd 6158, ¶5 (1992). The Commission sought further comment[6] and eventually adopted a 32 dBu standard. Cellular Service Second Report and Order, 7 FCC Rcd 2449, 2452-2453 (1992).

The Commission recently followed its cellular service precedent in increasing protected service areas in the Multichannel Multipoint Distribution Radio Services and the Instructional Television Fixed Service, whose channels provide the building blocks for wireless cable television operations. In this instance, wireless cable operators demonstrated that the 15 mile protected service areas originally provided for these services ignored the actual real world coverage that systems were providing to subscribers who lived well beyond a 15-mile radius of the television transmitters. Second Order on Reconsideration in General Docket No. 90-54 and General Docket No. 80-113, ¶4. ("Wireless Cable Order") See 60 Fed. Reg. 36737 (July 18, 1995). Thus, based on the real world experience of operators, the Commission extended the protected service area of such wireless cable systems to 35 miles.

Thus, in the present situation, the Commission must provide for protection to the incumbent licensees' 32 dBu contours, as opposed to the 40 dBu contours. The 40 dBu contour substantially underestimates the real-world signal propagation of the 900 MHz SMR service. Indeed, private field tests conducted by industry participants and system operators, including CELSMeR, have found much larger reliable service areas at much lower contour levels. CELSMeR's customers, like other 900 MHz SMR system customers, are routinely receiving reliable service at the 32 dBu contour and are subscribing on the assumption that

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[6] Cellular Service Further Notice of Proposed Rulemaking, *supra*, 6 FCC Rcd at 6159.

existing reliable service areas will be protected. *See* attached Declaration of Don Garrison. Therefore, the Commission must ensure that future 900 MHz SMR licensees do not degrade the 32 dBu service area contours of the incumbent licensees.

The Wireless Cable Order also provides significant guidance to the Commission regarding protection of incumbent operators from the "economic blackmail" that is possible when radio service licensing moves to an auction methodology. Id. 900 MHz SMR operators, like wireless cable operators, will be severely threatened if harmful interference from too closely spaced stations precludes service to the public in the corridors surrounding the incumbent stations. Incumbent 900 MHz SMR operators would be forced to either accept the interference or buy off the auction winner. In effect, the Commission would be creating a situation where auction bidders can acquire spectrum on the speculation that incumbents will have to yield to their economic demands in order to provide coverage to the service areas demanded by customers.

The Commission has already experienced the incredibly adverse impact of permitting too many closely spaced stations in a radio service when its technical rules crippled the AM service in the 1980s. *See* Review of Technical Assignment Criteria for the AM Broadcast Service, 6 FCC Rcd. 6373, 6374-75 (1991). Learning from that experience, the Commission can avert a similar disaster in the 900 MHz SMR service by basing spacing criteria on real world signal coverage.

B. The Omnibus Budget Act Requires That the 900 MHz Radio Service Have Protected Service Areas Comparable to That of Other Authorized Dispatch Service Providers

If 800 and 900 MHz cellular service provides reliable service along a 32 dBu contour, intuitively 900 MHz SMR service must also be providing reliable service along a 32 dBu contour. Section 6002(d)(3)(B) of the Omnibus Budget Reconciliation Act of 1993 ("Budget Act") obligates the Commission to make rules so that Part 90 CMRS licensees "are subjected to technical requirements that apply to licensees of substantially similar common carrier services." In an effort to comply with this mandate and eliminate inconsistencies between similar mobile services, the Commission amended its Rules by eliminating the prohibition on the provision of dispatch service by cellular licensees, other licensees in the Public Mobile Services and licensees in the Personal Communications Services. *See* Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications (Report and Order), FCC 95-98 (GN Docket No. 94-90), released March 7, 1995. Thus, the Commission has effectively increased the competition faced by the 900 MHz SMR service, which is itself a dispatch service.

The Commission cannot hobble the 900 MHz SMR industry with an overly restrictive definition of the protected reliable service area contour when the 900 MHz SMR industry is now required to compete with other mobile services with dispatch authority. Such action by the Commission is contradictory to the Congressional mandate to treat similarly positioned services alike. There is no rational basis for discriminating in favor of cellular licensees with respect to propagation and protected service area issues. The Commission would be blatantly violating the Budget Act if it affords 900 MHz licensees any lesser protected service area than the 32 dBu standard that is afforded to cellular.

VI. MAINTENANCE OF LOADING REQUIREMENTS FOR 900 MHz SMR SYSTEMS IS INEQUITABLE AND DETRIMENTAL TO THE 900 MHz SERVICE

As previously argued by CELSMeR[7], the Commission's decision to maintain loading requirements for 900 MHz incumbents is arbitrary and capricious. The Commission has failed to justify the disparate treatment of the 900 MHz and 800 MHz SMR frequency segments of this single radio service. The purported immaturity of the 900 MHz service vis-a-vis the 800 MHz service is not sufficient grounds to support continuation of loading requirements for 900 MHz incumbents. The fact that 900 MHz incumbents have been unable to provide wider coverage with their systems and thus have had more difficulty loading their systems is a function of restrictions imposed on the 900 MHz service by the Commission which limit 900 MHz incumbents to operating within DFAs, not the result of some propensity on the part of 900 MHz incumbents to warehouse frequencies. By continuing to apply loading requirements to the 900 MHz incumbents, the Commission is penalizing them for a situation not of their own making, but which is due to Commission restrictions.

The Commission's argument that 900 MHz incumbents can "overcome this obstacle by obtaining an MTA license", *see* Second Report and Order and Further Notice at ¶57, is specious. Not all 900 MHz incumbents, especially incumbents operating small single ten-channel block systems, will necessarily have the financial wherewithal to obtain an MTA license at auction. This does not mean, however, that these 900 MHz incumbents are not

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[7] *See* CELSMeR's June 5, 1995 Petition for Reconsideration of the Second Report and Order and Second Further Notice of Proposed Rule Making, FCC 95-159 (PR Docket 89-553), released April 17, 1995.

channel block systems, will necessarily have the financial wherewithal to obtain an MTA license at auction. This does not mean, however, that these 900 MHz incumbents are not providing valuable service to the public. Congress has prohibited the Commission from making auction revenues the sole factor in public policy. The Commission has violated this Congressional mandate in this case.

Moreover, the degree of channel loading is more appropriately a business decision of the 900 MHz incumbent. Indeed, the incumbent should be free to choose, based on market demand, whether to have a larger number of mobile units per channel, each using the frequencies at shorter intervals, or a smaller number of mobile units per channel, each using the frequencies at longer intervals. Such choice is the basis of a 900 MHz licensee's decision as to the nature of the business and type of service it will provide to the public. The Commission has granted such freedom of choice to cellular system operators, 220 MHz system operators, 800 MHz system operators and even new 900 MHz system operators who obtain licenses at auction. The Commission's denial of this choice to 900 MHz incumbents is arbitrary and capricious, and contrary to the Congressional mandate to treat similarly situated radio services alike

VII. REQUEST FOR CLARIFICATION

CELSMeR also seeks clarification of the Commission's rules providing the method for determining whether an applicant meets the definition of a small business. Specifically, CELSMeR seeks clarification that the personal gross incomes (as reported to the IRS on Form 1040) of individual human beings that are officers, directors or otherwise "attributable entities" of an applicant are not to be reported to the FCC or counted in determining small

business eligibility. The FCC has not required (or counted) such personal incomes in any other auction affording a small business preference, and it would be unworkable and irrational to do so here.

A person's individual income is the most private and confidential information imaginable -- even the IRS does not ordinarily reveal it to other agencies without court order. In the case of controlling individuals, their salaries, bonuses, and distributions from the applicant already are counted once in the applicant's gross revenues. Where an individual controls other companies, the gross revenues of those other companies are already counted as "affiliate" revenues. So no purpose is served by adding in the personal incomes of each officer, director and controlling shareholder.

VIII. CONCLUSION

Thus, the anticollusion and activity rules adopted in the *2d Recon Order and 7th R&O* are inappropriate and must be modified. The rules prohibiting collusion are excessively broad and thereby overly restrictive and will only serve to prevent the development of useful agreements that could enhance the efficiency of the auction without affecting the competitiveness of the auction. Geographic license area is irrelevant to the prevention of collusion in the 900 MHz auction. The anticollusion rules should be applied only to those applicants whose applications are mutually exclusive with one another. Commission supports such a limited application of the anticollusion rules.

The current activity rules, if not modified, will effectively deny incumbent bidders reasonable flexibility in their bidding strategies during the auction and will skew the auction by irrationally raising the price for encumbered spectrum and lowering the price for

unencumbered spectrum. These activity rules, if not modified, will also open the door to non-incumbent greenmailers and boilerrooms. Such a result is contrary to the public interest because the increase in the price of the encumbered spectrum will probably not sufficiently offset the decrease in the price of the unencumbered spectrum, and detrimental to the incumbent licensees who will be subjected to a skewed auction on their incumbent spectrum. Moreover, such a result is unconscionable given the availability of reasonable alternatives which would allow incumbents a more even playing field.

Additionally, use of the 40 dBu contour as the protected service area and maintenance of loading requirements for the 900 MHz SMR service are too restrictive, inequitable and contrary to Congressional mandate. Indeed, the 40 dBu contour substantially underestimates the real-world propagation of the 900 MHz SMR service, is not based on real-world operating characteristics, and overly restricts the 900 MHz SMR service without any legitimate purpose. Commission precedent supports changing the protected service area to the 32 dBu contour. Moreover, Congress' mandate that the Commission treat substantially similar common carrier services alike supports granting the 900 MHz SMR service a protected service area comparable to that of other authorized dispatch service providers, such as the cellular service.

Likewise, this Congressional mandate requires that the Commission eliminate loading requirements for the 900 MHz SMR service. The Commission has failed to justify the disparate treatment of the 900 MHz SMR service and the 800 MHz SMR, 220 MHz and cellular services. The purported immaturity of the 900 MHz service is insufficient grounds to support continuation of loading requirements. Moreover, the degree of channel loading

is more appropriately a business decision of the licensee. The Commission's decision to allow 800 MHz, 220 MHz and cellular operators and even new 900 MHz system operators who obtain licenses at auction the freedom to make such a business decision, but not the 900 MHz incumbents is inequitable and arbitrary and capricious.

Finally, the Commission should clarify that under Section 90.814 the personal gross incomes of individual human beings that are affiliated with a corporate applicant (*e.g.* , officers, directors, shareholders) are neither reported nor considered in determining small business eligibility.

WHEREFORE, in consideration of the foregoing, CELSMeR respectfully requests that the Commission reconsider its decisions in the *2d Recon Order and 7th R&O* to the extent discussed above.

Respectfully submitted,

CELSMER

By: _____
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October 23, 1995

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DECLARATION

I, Donald C. Garrison, do hereby declare under penalty of perjury as follows:

I am the President and Chief Operating Officer of American National Communications Companies, Inc. ("ANCCI"), which is a general partner of CELSMeR. CELSMeR manages and operates specialized mobile radio ("SMR") stations in the State of Florida and has developed a wide-area 900 MHz SMR system serving central Florida in major trading area ("MTA") M13 (Tampa-St.Petersburg-Orlando). Through the employment of new channel integration technology, CELSMeR has been able to develop a virtually seamless network providing contiguous service across central Florida from the Gulf Coast to the Atlantic Coast. CELSMeR is now focusing its attention on the integration of new digital technology into its wide-area system and is attempting to develop its wide-area system on an MTA basis. CELSMeR intends to participate in the auction for 900 MHz licenses.

I have read and am familiar with the Federal Communications Commission's September 14, 1995 *Second Order on Reconsideration and Seventh Report and Order*, FCC 95-395, in PR Docket No. 89-553. I have also read the "Petition for Reconsideration" to which this Declaration is attached. All facts set forth in the Petition for Reconsideration are true and correct. However, I would like to amplify and emphasize some of those facts.

CELSMeR has spent hundreds of thousands of dollars planning, constructing and managing systems in markets from the Gulf Coast to the Atlantic Coast in central Florida (*i.e.*, MTA M-13), and is committed to spending more. CELSMeR and the licensees in its wide-area network are serving large numbers of subscribers from multiple base stations. In all of the markets where CELSMeR is managing 900 MHz SMR systems, the "real world" reliable coverage area is out to the 32 dBu contour. That is, over 90% of calls are completed at that signal strength over 90% of the time. Thus, the Commission's proposal to limit a licensee's protected area to the 40 dBu contour lacks factual basis, is overly restrictive and is totally unacceptable.

CELSMeR's customers are routinely receiving and have come to expect reliable service out to the 32 dBu contour. New customers are subscribing on the assumption that they will receive service to the 32 dBu contour and that this existing reliable service area will be protected. If the Commission limits a 900 MHz system's protected service area to the 40 dBu

contour and, as a result, CELSMeR becomes unable to provide its customers reliable service to the 32 dBu contour of each base station within its wide-area system, CELSMeR will lose many of its customers.

Executed this 19 day of October, 1995.

Donald C. Garrison

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